

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

H. LEIGHTON LASKEY,)
)
Plaintiff,)
)
v.) C.A. No. 06-018-JJF
)
PFC. ROBERT C. LEGATES,)
PFC. WHEATLEY, MILLSBORO)
POLICE DEPARTMENT AND TOWN)
OF MILLSBORO)
)
Defendants.)

APPENDIX TO DEFENDANTS' OPENING BRIEF IN SUPPORT OF
THEIR MOTION FOR SUMMARY JUDGMENT

AKIN & HERRON, P.A.

/s/ Bruce C. Herron
Bruce C. Herron
Attorney I.D. No.: 2315
1500 Shallcross Avenue
Suite 1-A
Wilmington, DE 19806
(302) 427-6987
Attorneys for Defendants

Dated: July 19, 2007

TABLE OF CONTENTS

	<u>Page</u>
Affidavit of Officer Robert Legates	A-1
Affidavit of Officer Barry Wheatley	A-6
Delaware State Police Crime Lab Analysis/Blood Alcohol Concentration	A-10

H:\tmw5\data\files\Docs\3651.044\APPX\8126.wpd

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

H. LEIGHTON LASKEY,)
)
Plaintiff,)
)
v.) C.A. No. 06-018-JJF
)
PFC. ROBERT C. LEGATES,)
PFC. WHEATLEY and JOHN DOE,)
Supervisor on duty at)
Millsboro Police Department,)
)
Defendants.)

AFFIDAVIT OF OFFICER ROBERT C. LEGATES

STATE OF DELAWARE : :

SUSSEX COUNTY : :

BE IT REMEMBERED that on this 9th day of July, 2007, Officer Robert C. Legates did come before me, a Notary Public, and did depose and say the following:

1. I am a Corporal employed by the Millsboro Police Department. I have been a Millsboro Police Officer since March, 2002.
2. I am a named defendant in the above action. I have personal knowledge of all of the facts set forth in this Affidavit.

3. On January 3, 2004, at approximately 12:40 a.m., I was on duty as a Millsboro Police Officer driving a police vehicle northbound on U.S. 113 North. I observed a black Chevy Camaro also traveling northbound on Rt. 113. As the Camaro approached the intersection of Rt 113 and SR 24, it veered from the right lane to the turn lane without using a signal. The vehicle's reverse lights came on as the vehicle was traveling forward. The vehicle pulled up to the red light at the intersection and made a right turn with no signal. I activated my flashing lights and the Camaro pulled to the side of the road.

4. Upon approaching the vehicle I immediately detected a strong odor of alcohol. The driver of the vehicle provided a Maryland driver's license and was identified as Howard Laskey, II. The license contained a current alcohol restriction. There were no passengers in the vehicle.

5. Laskey stated that he was on his way to the Bay Bridge and that he "had a few beers." He failed several field sobriety tests at the scene.

6. I placed Laskey under arrest for suspicion of Driving Under the Influence of Alcohol and drove him to Delaware State Police Troop 4 in Georgetown. Soon after arriving at Troop 4, I asked Laskey if he would submit to a breath test in order to measure his blood alcohol level. He refused. I then informed him that I would transport him to Beebe Hospital in Lewes so that

a blood alcohol reading could be obtained through a blood draw. I never informed Laskey of the penalty (revocation of license and/or driving privileges) for refusal of consent to chemical testing.

7. During the ride to Beebe Hospital, Laskey stated: "You better get the big boys. There's no way you're getting blood from my arm." He also stated "I have nothing to lose." I then called Millsboro Police Officer Wheatley and requested that he meet us at Beebe Hospital.

8. Upon our arrival at Beebe Hospital, Officer Wheatley opened the rear passenger door. Laskey got out of the vehicle. Officer Wheatley instructed him to stand facing the police car's rear fender and lean over the trunk. Laskey complied. However, when Officer Wheatley reached down to place leg shackles on Laskey he stood up straight. Officer Wheatley asked two Lewes Police Department Officers (who were also present at the scene) for assistance. Laksey became physically combative at this point. Laskey kicked Officer Wheatley in the stomach as he attempted to secure the leg shackles. The Lewes officers grabbed his arms and upper torso and placed him on the trunk. It appeared that Laskey struck his nose on the trunk.

9. After Laskey kicked Officer Wheatley in the stomach, I ran to the rear of the vehicle and assisted Officer Wheatley in controlling Laskey's legs. Once his legs were secured, Officer

Wheatley and the two Lewes officers carried Laskey into the hospital and placed him onto a bed. I noticed that Laskey was bleeding slightly from a cut on the right side of his nose.

10. Laskey became verbally abusive. As Beebe Hospital Nurse Cary Rutherford began preparing a label for the blood sample, Laskey deliberately wiped blood from his nose onto Rutherford's arm. Officer Wheatley and the two Lewes officers then held Laskey's arms and legs down to prevent further assaults or offensive contact with hospital personnel.

11. Laskey did not physically resist during the actual process as hospital personnel extracted blood from his arm.

12. I asked Laskey if he wanted medical treatment for the cut on his nose. He told me to shut-up. Following the blood draw, Laskey was transported without incident to the Millboro Police Department for further processing. I again asked him if he wanted treatment for his nose. He declined.

13. I charged Laskey with DUI, disorderly conduct, two counts of offensive touching and four traffic violations. The Delaware State Police Crime Lab Report analysis of Laskey's blood sample (Exhibit A attached hereto) revealed a blood alcohol concentration of .18. Laskey later pled guilty to Driving Under the Influence of Alcohol.

14. The only physical force I used during the entire incident was grabbing Laskey's legs for the purpose of securing the leg shackles. This occurred after Laskey kicked Officer Wheatley. I did not punch, kick, push or strike Laskey in any way.

Robert C. Legates - 1067
Officer Robert Legates

SWORN TO AND SUBSCRIBED BEFORE ME, a Notary Public, on the day and year aforesaid.

Jean B. Burton
Notary Public

H:\tmw5\data\files\Docs\3651.044\AFF\7979.wpd

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

H. LEIGHTON LASKEY,)
)
Plaintiff,)
)
v.) C.A. No. 06-018-JJF
)
PFC. ROBERT C. LEGATES,)
PFC. WHEATLEY and JOHN DOE,)
Supervisor on duty at)
Millsboro Police Department,)
)
Defendants.)

AFFIDAVIT OF OFFICER BARRY WHEATLEY

STATE OF DELAWARE :
 :
 :

SUSSEX COUNTY :
 :
 :

BE IT REMEMBERED that on this 9th day of July, 2007,
Officer Barry Wheatley did come before me, a Notary Public, and
did depose and say the following:

1. I am a Corporal employed by the Millsboro Police
Department. I have been a Millsboro Police Officer since
March, 2001.

2. I am a named defendant in the above action. I have
personal knowledge of all of the facts set forth in this
Affidavit.

3. On January 3, 2004, at approximately 1:15 a.m., while on duty as a Millsboro Police Officer, I received a call from Millsboro Police Officer Robert Legates. Officer Legates reported that he was transporting a subject under arrest for DUI to Beebe Hospital in Lewes for a blood draw. Officer Legates requested assistance because the subject had made statements indicating that he intended to resist attempts to draw blood.

4. I responded to Beebe Hospital in Lewes and observed Officer Legates' police vehicle near the Emergency Room entrance. I opened the rear passenger door and saw the plaintiff Howard Laskey seated in the back seat with his hands cuffed behind his back. I asked Laskey to get out of the vehicle. Laskey complied. I did not drag or carry Mr. Laskey out of the vehicle. I may have touched Mr. Laskey's arm to guide him but there was no other physical contact with Mr. Laskey at this point.

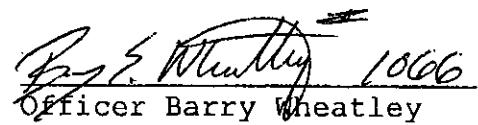
5. I instructed Laskey to stand facing the police car's rear fender and to lean over the trunk. As I began to place leg shackles on Laskey's legs, he suddenly stood up straight. Two officers from the Lewes Police Department were present at the scene. I asked them for assistance and continued my attempts to place the leg shackles on Laskey. Laskey then kicked me in the stomach. The Lewes officers placed Laskey on the trunk. I was able to secure the leg shackles with the assistance of Officer Legates.

6. Once Laskey's legs were secured, I carried him into the hospital with the assistance of the two Lewes officers. We placed him Laskey on a bed in the Emergency Room. It appeared that Laskey was bleeding slightly from a cut on the right side of his nose.

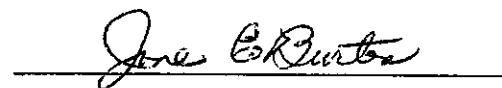
7. Laskey swore at hospital personnel. As a Beebe hospital nurse began preparing a label for the blood sample, Laskey deliberately wiped blood from his nose onto the nurse's arm. I then held Laskey's arms down to prevent further assaults or offensive contact with hospital personnel. The two Lewes officers assisted me in restraining Laskey.

8. Laskey did not physically resist during the actual process as hospital personnel extracted blood from his arm.

9. The only physical force I used during the incident was (1) in restraining and securing Laskey's legs with leg shackles in the parking lot outside the hospital and (2) holding Laksey's arms down inside the hospital after he wiped his blood on the arm of a hospital nurse. I did not punch, kick, push or strike Laskey in any way.


Barry S. Wheatley 1006
Officer Barry Wheatley

SWORN TO AND SUBSCRIBED BEFORE ME, a Notary Public, on the
day and year aforesaid.


Jane E. Burton
Notary Public

H:\tmw5\data\files\Docs\3651.044\AFF\7992.wpd

DELAWARE STATE POLICE CRIME LABORATORY

BLOOD ALCOHOL REPORT AND CERTIFICATE OF ANALYSIS

DELAWARE STATE POLICE CRIME LABORATORY
TOXICOLOGY SECTION
P.O. BOX 430
DOVER, DE 19903
PHONE: (302)739-5975
FAX: (302)739-4752

Subject:

LASKEY, HOWARD

The blood sample described below was received by the undersigned analyst from a temporary evidence refrigerator in accordance with procedures established by the Delaware State Police Crime Laboratory to receive evidence of this type. The sample seal had not been broken or tampered with when received.

This sample was tested by the undersigned analyst who is certified by the Delaware State Police Crime Laboratory as qualified under the standards approved by the Delaware State Police Crime Laboratory to analyze blood samples to determine alcohol concentration. The analysis of this blood sample was properly and accurately performed under the Standard Operating Procedure for Blood Alcohol Analysis approved by the Delaware State Police Crime Laboratory.

Complaint Number: 84-04-0007

Kit Number: R-0628

Kit Expiration Date: 09/30/2004

Sample Received From: Delaware State Police Troop 4

Date Received: 02/17/2004

Time Received: 1:09 PM

Date Analyzed: 02/27/2004

received
3-2-04

It is hereby certified that the blood sample in the opinion of this analyst contains the alcohol concentration reported below.

BLOOD ALCOHOL CONCENTRATION RESULTS:

0.18

All sample results are expressed as an amount of alcohol in a sample of a person's blood equivalent to the number of grams of alcohol per hundred milliliters of blood.

ANALYST: David Sockrider

Forensic Chemist
Delaware State Police
Crime Laboratory

DATE:

2/27/04

A-10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

H. LEIGHTON LASKEY,)
)
Plaintiff,)
)
v.) C.A. No. 06-018-JJF
)
PFC. ROBERT C. LEGATES,)
PFC. WHEATLEY, MILLSBORO)
POLICE DEPARTMENT AND TOWN)
OF MILLSBORO)
)
Defendants.)

NOTICE OF SERVICE

I HEREBY CERTIFY that on this 19th day of July, 2007, a copy of DEFENDANTS' APPENDIX TO OPENING BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT was electronically filed with the Clerk of the Court using CM/ECF and was sent first class mail to the following party:

H. Leighton Laskey
T1833286
527 Baltic Avenue
Brooklyn, MD 21225

AKIN & HERRON, P.A.

/s/ Bruce C. Herron
Bruce C. Herron
Attorney I.D. No.: 2315
1500 Shallcross Avenue, Suite 1-A
Wilmington, Delaware 19806
(302) 427-6987
Attorney for Defendants